

Exhibit 5

**FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2320 - WILDERNESS MANAGEMENT**

5. The Act of January 3, 1975 (16 U.S.C. 1131-1132) provides special direction relating to the acquisition, sale, and condemnation of private lands for 16 specific wilderness areas in the eastern United States. The law requires owners of private lands within these areas to notify the Forest Service of proposed changes in use or ownership of the land.

6. The National Forest Management Act of 1976, as amended (16 U.S.C. 1600) provides that management direction for wilderness be incorporated into forest plans and sets minimum standards for the content of the plans.

7. The Clean Air Act, as amended August 7, 1977 (42 U.S.C. 7401, 7418, 7470, 7472, 7474, 7475, 7491, 7506, 7602) directs the Forest Service to protect class I air quality standards in certain wilderness areas and class II standards on the remaining wilderness areas.

8. The specific laws designating wilderness areas in the National Forest System.

2320.11 - Regulations

The following regulations in Title 36 of the Code of Federal Regulations apply to wilderness management:

1. Part 293 - Wilderness - Primitive Areas.
2. Part 261 - Prohibitions.
3. Part 219 - Planning.
4. Part 228 - Minerals.

2320.2 - Objectives

1. Maintain and perpetuate the enduring resource of wilderness as one of the multiple uses of National Forest System land.

2. Maintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces.

3. Minimize the impact of those kinds of uses and activities generally prohibited by the Wilderness Act, but specifically excepted by the Act or subsequent legislation.

4. Protect and perpetuate wilderness character and public values including, but not limited to, opportunities for scientific study, education, solitude, physical and mental challenge and stimulation, inspiration, and primitive recreation experiences.

**FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2320 - WILDERNESS MANAGEMENT**

5. Gather information and carry out research in a manner compatible with preserving the wilderness environment to increase understanding of wilderness ecology, wilderness uses, management opportunities, and visitor behavior.

2320.3 - Policy

1. Where there are alternatives among management decisions, wilderness values shall dominate over all other considerations except where limited by the Wilderness Act, subsequent legislation, or regulations.

2. Manage the use of other resources in wilderness in a manner compatible with wilderness resource management objectives.

3. In wildernesses where the establishing legislation permits resource uses and activities that are nonconforming exceptions to the definition of wilderness as described in the Wilderness Act, manage these nonconforming uses and activities in such a manner as to minimize their effect on the wilderness resource.

4. Cease uses and activities and remove existing structures not essential to the administration, protection, or management of wilderness for wilderness purposes or not provided for in the establishing legislation.

5. Because wilderness does not exist in a vacuum, consider activities on both sides of wilderness boundaries during planning and articulate management goals and the blending of diverse resources in forest plans. Do not maintain buffer strips of undeveloped wildland to provide an informal extension of wilderness. Do not maintain internal buffer zones that degrade wilderness values. Use the Recreation Opportunity Spectrum (FSM 2310) as a tool to plan adjacent land management.

6. Manage each wilderness as a total unit and coordinate management direction when they cross other administrative boundaries.

7. Use interdisciplinary skills in planning for wilderness use and administration.

8. Gather necessary information and carry out research programs in a manner that is compatible with the preservation of the wilderness environment.

9. Whenever and wherever possible, acquire non-Federal lands located within wildernesses, as well as non-Federal lands within those areas recommended for inclusion in the system.

FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2320 - WILDERNESS MANAGEMENT

10. Inform wilderness visitors that they face inherent risks of adverse weather conditions, isolation, physical hazards, and lack of rapid communications, and that search and rescue may not be as rapid as expected in an urban setting in all publications and personal contacts.

11. Manage primitive areas as wilderness areas consistent with 36 CFR 293.17 until their designation as wilderness or to other use is determined by Congress.

2320.5 - Definitions

1. Wilderness. An area of wilderness is defined in sec. 2(c) of the Wilderness Act (16 U.S.C. 1131-1136). The term "wilderness" shall be applied to all National Forest System lands included in the National Wilderness Preservation System (NWPS). See 36 CFR 261 and 293.

2. Untrammeled. In the context of the Wilderness Act, an untrammeled area is where human influence does not impede the free play of natural forces or interfere with natural processes in the ecosystem.

3. Mechanical Transport. Any contrivance for moving people or material in or over land, water, or air, having moving parts, that provides a mechanical advantage to the user, and that is powered by a living or nonliving power source. This includes, but is not limited to, sailboats, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. It does not include wheelchairs when used as necessary medical appliances. It also does not include skis, snowshoes, rafts, canoes, sleds, travois, or similar primitive devices without moving parts.

4. Motorized Equipment. Machines that use a motor, engine, or other nonliving power sources. This includes, but is not limited to, such machines as chain saws, aircraft, snowmobiles, generators, motorboats, and motor vehicles. It does not include small battery or gas powered handcarried devices such as shavers, wristwatches, flashlights, cameras, stoves, or other similar small equipment.

5. Permanent Improvement. A structural or nonstructural improvement that is to remain at a particular location for more than one field season. Permanent improvements include such items as trails, toilet buildings, cabins, fences, tent frames, fire grills, and instrumentation stations.

6. Primitive Area. All areas so designated by the Secretary of Agriculture on the effective date of the Wilderness Act and that have not yet been permanently designated as wilderness or to other use by act of Congress (36 CFR 293.17).

7. Temporary Structure. Any structure that is easy to dismantle, that could be removed completely from a site between periods of actual use, and that must be removed at the end of each season of use if the non-use period is greater than 30 days.

**FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2320 - WILDERNESS MANAGEMENT**

5. Construction and reconstruction of trails with treads less than 24 inches in width.
6. Operating plans for mineral exploration and development (FSM 2810, FSM 2820, and FSM 2830).
7. Responses to requests of the Bureau of Land Management for Forest Service concurrence as to terms and conditions of operating plan approval for licenses, prospecting permits, and leases; and consent to the Office of Surface Mining for coal leases (FSM 2820).
8. Routine maintenance on any existing water use or water-control structure as long as this maintenance does not change the structure's location, size, or type, or increase the storage capacity of a reservoir.

2323.04e - District Ranger

The District Ranger is responsible for approving:

1. The construction and installation of simple and temporary structures, including corrals, but excluding cabins, for outfitter and guide pack stock operations in accordance with forest plan direction.
2. Maintenance or replacement of existing signs, instruments, and other minor improvements.
3. Trail management schedules.

2323.1 - Management of Recreation

2323.11 - Objectives

1. Provide, consistent with management of the area as wilderness, opportunities for public use, enjoyment, and understanding of the wilderness, through experiences that depend upon a wilderness setting.
2. Provide outstanding opportunities for solitude or a primitive and unconfined type of recreation.

2323.12 - Policy

1. Maximize visitor freedom within the wilderness. Minimize direct controls and restrictions. Apply controls only when they are essential for protection of the wilderness resource and after indirect measures have failed.
2. Use information, interpretation, and education as the primary tools for management of wilderness visitors.

**FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2320 - WILDERNESS MANAGEMENT**

2323.13g - Outfitter and Guide Operations

Address the need for and role of outfitters in the forest plan. The plan must address the type, number, and amount of recreation use that is to be allocated to outfitters. Ensure that outfitters provide their service to the public in a manner that is compatible with use by other wilderness visitors and that maintains the wilderness resource.

Approve only temporary structures and facilities for outfitter and guide operations necessary to properly meet their public service in a manner compatible with the wilderness environment. These structures shall be located away from main trails, streams, lakes, key interest features, and non-outfitted public use areas. Specify in forest plans, subsequent implementation schedules, or special use permits what improvements are permitted and their locations.

Ensure that outfitters remove all equipment and material, other than structures authorized to remain such as dismantled structure frames and poles made of native material, from the wilderness at the end of each season. Do not permit caches, and phase out existing ones on a planned basis. Do not allow permanent improvements such as cabins, toilet buildings, or tent frames with floors and sides. Further direction for managing outfitter and guides operations is found in section 2324.3, FSM 2343, FSM 2700 and FSH 2309.19, the Wilderness Management Handbook.

2323.13h - Competitive Events

Do not permit competitive events, including competition involving physical or mental endurance of a person or animal, foot races, canoe or boat races, competitive trail rides, survival exercises (including military), or other activities of this nature in wilderness.

2323.14 - Visitor Management

Plan and manage public use of wilderness in such a manner that preserves the wilderness character of the area. Provide for the limiting and distribution of visitor use according to periodic estimates of capacity in the forest plan. Visitor management direction for protecting wildlife and fish resources is in FSM 2323.3 and FSH 2309.19. Direction for methods and techniques of visitor management is in FSH 2309.19.

2323.2 - Management of Range

2323.21 - Objective

Manage wilderness range in a manner that utilizes the forage resource in accordance with established wilderness objectives (36 CFR 293.7).

**FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2320 - WILDERNESS MANAGEMENT**

2323.34 - Fisheries Management

Emphasize quality and naturalness in managing fisheries in wilderness.

2323.34a - Stocking Programs

In cooperation with the States, develop fish-stocking programs that meet wilderness management objectives. Recognize the probability of increased visitor use of stocked waters and their full impact and effect on the wilderness resource. Direct practices at achieving quality fishing opportunities. Regional Foresters shall develop with each State a supplement to the State-Forest Service Memorandum of Understanding (FSM 2600) that establishes a stocking policy for each wilderness. Spell out basic stocking decisions in the forest plan or in implementation schedules for each wilderness.

2323.34b - Stocking Methods

Stocking shall normally be done by primitive means, however, Regional Foresters may permit dropping of fish from aircraft for those waters where this practice was established before the area was designated a wilderness. Conduct aerial stocking pre-or post-visitor seasons. Landings are prohibited. Specify mitigation for stocking methods in wilderness implementation schedules.

2323.34c - Stocking Policy

1. Do not stock exotic species of fish in wilderness. The order of preference for stocking fish species is:
 - a. Federally listed threatened or endangered, indigenous species.
 - b. Indigenous species.
 - c. Threatened or endangered native species if species is likely to survive and spawn successfully.
 - d. Native species if species is likely to survive and spawn successfully.
2. Stock barren waters only after determining that the scientific and research values of such barren waters will not be eliminated from a wilderness and documenting the desirability of such action in the forest plan.
3. Consider on a case-by-case basis presently unstocked waters that at one time supported an indigenous fish population and that could provide suitable habitat for an indigenous species with unusual wilderness appeal.

**FSM 2300 – RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2350 – TRAIL, RIVER, AND SIMILAR RECREATION OPPORTUNITIES**

2. TMOs. Manage use of National Recreation Trails consistent with their TMOs and the management objectives for the surrounding NFS lands. Where a segment of one of these trails traverses a wilderness area, manage that segment so that the segment and its associated uses are compatible with wilderness objectives.
3. Rescission of Establishment of National Recreation Trails. Occasionally it may be necessary to rescind establishment of a National Recreation Trail. When it is not possible to relocate a National Recreation Trail or otherwise preserve its status, the regional forester may approve rescinding its establishment. Submit copies of the report effecting the rescission to the Washington Office Director of Recreation, Heritage, and Volunteer Resources and cooperators involved in establishment of the National Recreation Trail (FSM 2353.54).
4. Rescission of Establishment of National Recreation Trails in a Wilderness Area. National Recreation Trails that predate a wilderness area may remain. However, they should be considered for rescission 10 years after their establishment. See FSM 2353.54 regarding the statement in the establishment report for National Recreation Trails concerning their availability for public use for at least 10 consecutive years.

2354 - RIVER RECREATION MANAGEMENT

2354.01 - Authority

Administration of the rivers within the National Forest System falls under the general statutory and regulatory authorities, including mining and mineral leasing, laws, that apply to lands. The basic authority to regulate public use of waters within the boundaries of a National Forest or Wild and Scenic River derives from the property clause of the U.S. Constitution as implemented through the laws pertaining to the administration of the National Forests. The authority of the Secretary of Agriculture to regulate the public use of waters found at 16 USC 551 has been upheld in many court decisions. The most notable cases are:

1. *United States v. Lindsey*, 595 F.2d 5 (1979). The court held that within a federally designated area the Federal Government had the authority to regulate camping on State-owned land below the high water mark of a river.
2. *United States v. Richard*, 636 F.2d 236 (1980) and *United States v. Hells Canyon Guide Service*, 660 F.2d 735 (1981). The courts held that the Forest Service can regulate use of a river notwithstanding the fact that users put in and take out on private land.

The principal laws with special applicability to river management are:

**FSM 2300 – RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2350 – TRAIL, RIVER, AND SIMILAR RECREATION OPPORTUNITIES**

2354.14 - Navigability of Rivers

Rivers are, as a matter of law, either navigable or nonnavigable. Navigability is a judicial finding and must be made by a Federal court in order to bind the United States. Most rivers in the country have not been adjudicated as navigable or nonnavigable. Consider them nonnavigable until adjudicated otherwise.

If navigable, then the State owns the bed of the river up to the high water mark, and the Coast Guard and the Corps of Engineers have certain additional regulatory powers.

The Forest Service retains authority to regulate the use of a river and the National Forest lands on the shorelines whether it is navigable or nonnavigable. This jurisdiction may be concurrent with other State and Federal agencies. In particular for navigable rivers, cooperate with State authorities to the extent that the State wishes to manage certain activities on rivers. In cases of a conflict between National Forest and State interests, consult with the U.S. Department of Agriculture, Office of the General Counsel.

2354.2 - Wild and Scenic Study Rivers

Wild and Scenic study rivers are established by Congress and are studied using existing planning and environmental analysis procedures. See FSM 1924, FSH 1909.12, 36 CFR 297, and the Revised Guidelines for Eligibility, Classification, and Management of River Areas (47 FR 39454, Sept. 7, 1982).

2354.21 - Management of Study Rivers

Manage wild and scenic river study areas to protect existing characteristics through the study period and until designated or released from consideration.

Resource management activities may be carried out provided they do not cause a negative or reduced classification recommendation.

Land management plans must identify the areas managed for the wild and scenic study river values.

The Act protects designated study rivers from Federal Power Act projects on or affecting the river (sec. 7(b)).

The protection periods prescribed by the Act are three complete fiscal years for the study and a period not to exceed 3 years for Presidential and Congressional action. In the event of any type of delays on reports with a designation recommendation, extend the protected period to ensure Congress has up to 3 years to consider the study report.